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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 13th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 August 1998, at 3 p.m.

Chairman: Mr. GUISSÉ

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(b) XENOPHOBIA (continued)

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(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

The meeting was called to order at 3.05 p.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES;

(b) XENOPHOBIA

(agenda item 3) (continued) (E/CN.4/Sub.2/1998/4 and 5)

1. The CHAIRMAN invited Mr. Mehedi, Mr. Bengoa and the representative of the Committee on the Elimination of Racial Discrimination, Mrs. Sadiq Ali, to introduce their joint working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/Sub.2/1998/4).

2. Mr. MEHEDI, introducing the joint working paper, drew attention to paragraphs 1, 3 and 4. The section for which he himself was responsible, an examination of 12 countries in Africa, was contained in paragraphs 52-87. He drew particular attention to the general comments contained in paragraphs 84-87.

3. Mr. BENGOA said that collaboration on the working paper had provided a good experience of cooperation between United Nations human rights bodies. It had been most interesting to have an overall picture of how countries dealt with racial discrimination. His own study was contained in paragraphs 117-163. The basic source used was the periodic reports submitted to the Committee on the Elimination of Racial Discrimination but, if the project continued into the future, he would welcome further submissions from Governments and non-governmental organizations (NGOs). He drew particular attention to paragraphs 117-123.

4. On the question of populations of African origin (para. 124), he noted that positive steps had been taken in some Latin American countries, particularly Brazil and Colombia. With regard to human rights education, he said that the most important advance had been the establishment in many countries of Latin America of intercultural bilingual education programmes targeting indigenous populations (paras. 134-148).

5. Mrs. SADIQ ALI (Committee on the Elimination of Racial Discrimination) drew attention to paragraphs 88-101.

6. Mr. EIDE said that the joint working paper was a useful preparation for the forthcoming World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance. Matters of particular interest to him - multicultural and intercultural education - were well covered. Other subjects needed to be considered, in order to ensure the success of the World Conference. They included the situation of migrants and de facto segregation, which were related to the larger issue of the effects of globalization on racial discrimination. In that connection, the issues discussed in the working paper prepared by Mr. Bossuyt on the concept of affirmative action (E/CN.4/Sub.2/1998/5) should be further developed, particularly the question of how to maintain a balance between affirmative measures and the risk of creating privileges.

7. He noted that, although colour discrimination was still important, most killings took place between groups not significantly different from each other in colour (for example, in Sri Lanka or the former Yugoslavia), however much they might differ ethnically or culturally.

8. A further look should be taken at "conflict entrepreneurs", who made use of ethnic tensions to further their own political ends; at possible remedies and redress mechanisms at the local and international levels; and at the gender factor: the fact that women - and children - were doubly vulnerable in situations of discrimination. He would try to initiate collaboration between a number of specialized research institutions on the various issues in preparation for the World Conference.

9. The CHAIRMAN said he welcomed Mr. Eide's transversal, rather than regional or continental, approach.

10. Mr. WADLOW (Association for World Education) said that the forthcoming World Conference was likely to be more complex than the two earlier world conferences on similar subjects, since the concept of racism had become broader. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance considered that there needed to be serious intellectual preparation for the Conference and, to that end had organized an expert seminar in June 1997, the results of which had been published in book form as La discrimination raciale.

11. The seminar had stressed the need to understand more fully the conceived images of "the self" and "the other" and the subtle use of language to belittle other groups, with subsequent discrimination. Research on racial discrimination was difficult to carry out because such images were developed in early childhood and were linked with many other feelings, but it was made still more difficult when serious analysis was blocked for political or religious reasons, even within the United Nations system.

12. In April 1997, the Special Rapporteur's report on racism had been censured on the grounds of blasphemy. That was only an extreme example of the growing governmental pressure to limit the objective analysis of situations and ideas. Under a draft United Nations Code of Conduct for Officials other than Secretariat Officials and for Experts on Mission, the role of international civil servants was defined in a narrow way and some restrictive measures would apply to human rights special rapporteurs also. The matter should be widely discussed; if concerted action were not taken, an accumulation of restrictions would lead to self-censorship and worse.

13. The NGO community had already spoken up for the independence of special rapporteurs, 37 of them having put their names to a statement to that effect. NGOs themselves were under pressure to limit their analysis and presentation of cases of discrimination. There had been recent governmental pressures to exclude members of NGO delegations, to try to deny visa applications and to take retaliatory measures through the Governmental Committee on NGOs in New York. He was confident that the Sub-Commission would act to ensure that the need for scholarly and independent judgement was respected.

14. Mr. MUSAWI (Interfaith International) said that religious intolerance, a pretext for many of the world's conflicts, was often indicative of underlying racism and historically-rooted fears. Situations necessitating urgent action by the Sub-Commission included the extreme deprivation through war of masses of people in the southern Sudan, massacres and desecration of religious sites in Kashmir and the continued killings of innocent Shia and Sunni peoples in Karachi, Pakistan. The Government of Pakistan should be requested to guarantee life and religious tolerance to all people within its country.

15. In Sri Lanka, the Government should be urged to foster understanding between the Tamil and Sinhalese cultures, to end discrimination against scholars and religious centres and to release those persons detained for more than six years without trial. In China, his organization had been a witness to the violations of the human rights of Tibetans, and of Muslims in Chang Jiang. It also sought to combat discrimination against indigenous peoples everywhere, and to support their efforts to safeguard their spiritual and cultural identities, protect their religious sites and achieve their treaty rights.

16. With a view to combating discrimination and exclusion and promoting respect for the human person irrespective of cultural differences, his organization would cooperate with special rapporteurs and working groups to help make the resolutions of the Sub-Commission more action-oriented.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

(agenda item 4) (E/CN.4/Sub.2/1998/6-10 and 30; E/CN.4/Sub.2/1997/9)

17. Mr. ZHONG Shukong said that the fiftieth anniversary of the Universal Declaration of Human Rights was an appropriate occasion for both celebration and stocktaking. Achievements included the progressive enrichment of the original Declaration with further human rights instruments. The Declaration on the Right to Development, adopted in 1986, proclaimed for the first time that the right to development was an inalienable human right, and set forth the role of States and the relevant international requirements in that regard.

18. That same period in human rights history had also been characterized by a four decade-long cold war, the distortion of human rights and attempts at "global domination" by a small number of countries. Human rights issues had been persistently used as a pretext for exerting political pressure, practising double standards and interference in the internal affairs of States, particularly developing ones.

19. "Political rights of individuals" had dominated the agenda to the neglect, and even negation, of economic, social and cultural rights, and of the right to development. A small group of countries had arrogated to themselves the role of judges over the "human rights situation" of other countries, while that much larger group of supervised countries had found itself slandered year after year in human rights forums.

20. Such a state of affairs had aroused the indignation of the developing countries and was in itself a violation of human rights. The sooner that "cold war mentality" was discarded the better.

21. Meanwhile, global inequities had only widened. In 1996 (according to the United Nations Economic and Social Survey, 1997), developing countries, constituting more than 78 per cent of humankind, had accounted for only 20 per cent of world GDP, and there had been 1.3 billion people living below the poverty line. The contrast in consumption between North and South had been even more glaring. The so-called "affluence" of developed countries had been attained at the expense of colonies and semi-colonies, and continued to be protected by an unjust and inequitable international economic order.

22. One African delegate had even queried the usefulness of talk of human rights when hundreds of people in his native province were dying of hunger each day. The right to development and the eradication of hunger and poverty must, indeed, be a priority item on the agenda of all relevant international organizations and forums, including the Commission on Human Rights and the Sub-Commission.

23. At its forty-eighth session, the Sub-Commission had adopted resolution 1996/22 in which, inter alia, it requested the Secretary-General to invite all relevant United Nations bodies and agencies to step up their action aimed at promoting international cooperation for the realization of the right to development and to provide him with information thereon, and to transmit annually to the Sub-Commission the information thus received. Regrettably, however, no such information had yet been received.

24. Unless the right to development was realized, poverty, backwardness, hunger and malnutrition could not be alleviated, nor could the rights to education, employment, and health be enjoyed. Development was necessary before the basic needs of all peoples could even begin to be met, including the rights to food, clothing, housing and drinking water. Furthermore, in the absence of sustained efforts at socio-economic development, civil and political rights could not be achieved and political independence and State sovereignty could not be safeguarded.

25. Development was thus a prerequisite for the realization of all other human rights. Moreover, development and social stability were interdependent factors. Without development, cultural and moral standards could not be raised, and social unrest and crime hampered the realization of development goals.

26. Sustainable development must therefore be a top priority for all States, and no country could boast perfection in that domain. Patterns of production and consumption in the developed world had, after all, been identified as

unsustainable. A "new global partnership" must be created and strengthened if an ecologically sustainable and equitable development was to be achieved. The results of the United Nations Conference on Environment and Development had indicated that a new international economic order must be based on "common but differentiated responsibilities", with the developed countries providing the committed financial resources and ensuring technology transfer.

27. Regrettably, the United Nations had taken very few practical steps to promote the realization of the right to development since the adoption of the relevant Declaration 12 years previously. Nor had the views of developing countries been given due consideration in the reform process. Promotion of the right to development was also in danger of being hampered by the introduction of extraneous issues and arbitrary interpretations and "standards" which ran counter to the Declaration.

28. In the contemporary world, peace and development were the two top priorities; they would remain so in the twenty-first century. The sooner the provisions of the Declaration on the Right to Development were translated into action by all Member States in a spirit of "new global partnership", the better the world would be.

29. Mr. BENGOA, introducing the addendum (E/CN.4/Sub.2/1998/8) to his final report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution (E/CN.4/Sub.2/1997/9), drew the Sub-Commission's attention in particular to the general conclusions it contained (paras. 4-9). They were that growth in the world economy and increasing globalization had resulted in a marked negative distribution of income at both the international and national levels; that bad distribution of income was always linked to poverty; and that such bad distribution, when accompanied by economic growth, caused explosive social situations, with young people losing their confidence in and their commitment to democracy, thereby causing a wide range of social problems; that persistently bad income distribution was the cause of persistent violations in particular of economic, social and cultural rights; and that income distribution should become an economic and social indicator to be used alongside monetary indicators by public and private international financial institutions and agencies in their analyses of international cooperation, investment, trade and relations among countries and institutions.

30. Although it had the central responsibility for the realization of economic, social and cultural rights, the State was not the sole actor on the economic and social scene. The globalization of economic, social and cultural relations required a new outlook. Transnational corporations, trading and financial enterprises and others were emerging as an inseparable part of globalization, and there was an increasing need to establish "codes of conduct" or "ethics of globalization". Discussion of economic, social and cultural rights exclusively among representatives of Governments was really just a discussion of standards. There was no forum that brought together all the actors concerned. Some private forums had emerged, such as that held at Davos in Switzerland, but they had no standard-setting capacity.

31. The main practical recommendation of his study, therefore, was the establishment of a social forum with the participation of States;

international financial institutions, particularly the World Bank and International Monetary Fund (IMF); international development and cooperation agencies; NGOs devoted to development and action, especially in the third world; and also perhaps banks and international private corporations, which might see the usefulness of incorporating economic, social and cultural rights into their policies, as had already been done to some extent with regard to the environment. The social forum would offer a useful opportunity for an annual dialogue involving all the actors concerned. The Commission on Human Rights should discuss the recommendation and give the Sub-Commission the mandate to organize such a forum.

32. Mr. MEHEDI, introducing his working paper on the realization of the right to education, including education in human rights (E/CN.4/Sub.2/1998/10), said that the objectives of education were closely bound up with the State's role in educational policy. The State must refrain from interfering with or constraining the exercise of recognized rights and freedoms. It must take legislative and other steps to prevent their violation by third parties and it must implement long-term programmes involving a financial input which would be beyond the means of individuals. He hoped that his working paper would stimulate a wide-ranging discussion on the realization of the right to education, including education in human rights.

33. Mr. PARK congratulated Mr. Bengoa on his presentation of his excellent final report on the relationship between the enjoyment of human rights and income distribution (E/CN.4/Sub.2/1997/9) together with its addendum (E/CN.4/Sub.2/1998/8). He fully supported the proposal that a social forum be established within the Sub-Commission.

34. Turning to agenda item 4 (b), he said that rather more attention had been given in recent years to economic, social and cultural rights and the right to development. Addressing the Third Committee of the General Assembly at its last session, the High Commissioner for Human Rights had said that progress towards the integration of those rights was indivisible from and interlinked with civil and political rights. The Intergovernmental Group of Experts established by the Commission on Human Rights had recommended a follow-up mechanism to ensure promotion and implementation of the Declaration on the Right to Development in its report to the Commission (E/CN.4/1997/22). In resolution 52/136 adopted on 12 December 1997, the General Assembly, expressing concern at the emergence of new obstacles, including globalization, to the realization of the right to development, had requested the Commission on Human Rights to examine the desirability of including the Declaration on the Right to Development in the International Bill of Human Rights.

35. The Commission, in its resolution 1998/72, had recommended the establishment of an open-ended working group to meet after the fifty-fifth and fifty-sixth sessions and the appointment of an independent expert to submit a study on progress in the implementation of the right to development to the working group. Moreover, at the fifty-fourth session of the Commission, the High Commissioner for Human Rights had described the right to development as a right that synthesized all others and had drawn attention to a Memorandum of Understanding between her Office and the United Nations Development Programme (UNDP) on strengthening cooperation with a view to the realization of the right to development.

36. The Declaration on the Right to Development, adopted in 1986, and the World Conference on Human Rights, held in 1993, had both recognized the right to development as an inalienable human right and the General Assembly, at its fifty-second session, had described the Declaration on the Right to Development as an integral link between the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action. Economic, social and cultural rights and the right to development were therefore no longer secondary to civil and political rights and should be actively promoted in such a way as to be mutually reinforcing.

37. Such aspirations were still far removed, however, from the lives of ordinary people around the world. The Commission on Human Rights, in resolution 1998/72, had denounced as unacceptable the fact that absolute poverty, hunger and disease, lack of adequate shelter, illiteracy and hopelessness were still the lot of over a billion people. According to the Agenda for Development, adopted by the General Assembly in 1997, the eradication of poverty was a critically important prerequisite for enduring peace and stability. It was therefore encouraging that the Commission on Human Rights, in its resolution 1998/25, had recommended the appointment of an independent expert on the question of human rights and extreme poverty, one of whose tasks would be to make suggestions to the Commission at its fifty-fifth session on a possible draft declaration on human rights and extreme poverty.

38. The Sub-Commission should be prepared to initiate the drafting of such a text, drawing on the findings of its studies on human rights and extreme poverty, income distribution and human rights, and the right to food, and on the two papers being prepared on transnational corporations and access to drinking water and sanitation services.

39. In the meantime, the Sub-Commission had yet to devise a suitable mechanism to follow up its resolutions 1996/22 and 1997/109 aimed at promoting international cooperation for the realization of the right to development in the context of human rights and the United Nations Decade for the Eradication of Poverty (1997-2006).

40. He suggested that the Declaration on the Right to Development should be translated into as many languages as possible. The Sub-Commission, in cooperation with the Office of the High Commissioner for Human Rights, should urge Governments to fulfil that basic requirement and assist them in doing so.

41. Mr. WEISSBRODT praised the joint working paper prepared by members of the Sub-Commission and the Committee on the Elimination of Racial Discrimination (E/CN.4/Sub.2/1998/4) as an important initiative. He also complimented Mr. Park on his statement concerning the right to development and Mr. Mehedi on his working paper concerning the right to education. It was difficult to know how to proceed on the latter issue, since the Commission had launched another initiative relating to the right to education, thus duplicating work that it had itself delegated to the Sub-Commission.

42. Mr. Bengoa's study of the relationship between human rights and income distribution made a significant contribution to the understanding of the fundamental nature of economic, social and cultural rights and the binding

obligations they entailed. His focus on equality of opportunity offered a useful conceptual framework for addressing the violations of such rights. The greater the difference in income distribution, the greater the difference in opportunity. An equal opportunity policy should thus involve remedial measures to eradicate discrimination against certain persons, groups, areas or parts of society.

43. The notion of equal opportunity as a measure of a State's commitment to ensuring economic, social and cultural rights made explicit the relationship between such rights and core civil and political rights, including the right to non-discrimination. Women, children and minorities were disproportionately affected by violations of economic, social and cultural rights, a phenomenon that had been recognized by the World Summit for Social Development and also by UNDP, which had urged that data on income, literacy and life expectancy should be disaggregated along gender lines.

44. Mr. Bengoa's work demonstrated that conventional measures of poverty did not provide an accurate measurement of violations of economic, social and cultural rights. In his final report on human rights and extreme poverty (E/CN.4/Sub.2/1996/13), Mr. Despouy had reiterated that traditional indicators of economic growth did not adequately measure social development since they ignored the extent to which people exercised economic, social and cultural rights, participated in political life and made use of their freedom. He thus suggested that the Sub-Commission - possibly in the context of the social forum proposed by Mr. Bengoa - should consider information from national and international organizations, including UNDP, that published data disaggregated along gender, racial and ethnic lines.

45. The share of the world's wealthiest countries in global GNP had been growing in real terms and globalization was exerting a profound impact on economic inequality both within and between countries, inter alia through the activities of the transnational corporations. Those interrelated inequalities could present an increasing threat to global peace and stability.

46. The Sub-Commission should give serious consideration to Mr. Bengoa's recommendation concerning the establishment of a forum on economic, social and cultural rights which would review disaggregated data on poverty and income distribution as a basis for measuring remedial action, following up the agreement reached at the World Summit for Social Development and following up the relationship between income distribution and human rights, at both the international and national levels. It should also urge States to endeavour to devote at least 0.7 per cent of their GNP to official development assistance (ODA).

47. Mr. Bengoa's report should be transmitted to the Special Rapporteur of the Commission on Human Rights on the question of human rights and extreme poverty, to the open-ended Working Group of the Commission on the Right to Development and to the Committee on Economic, Social and Cultural Rights. The Sub-Commission should urge the last two bodies to compile and consider statistics on poverty and income distribution disaggregated along gender, racial and ethnic lines.

48. The Sub-Commission itself should undertake a more detailed examination of remedial action to combat wealth disparity and income disparity in the light of the findings of the studies by Mr. Bengoa, Mr. Despouy and Mr. Guissé. The concept of affirmative action was one such remedial device and particular attention should therefore be paid to Mr. Bossuyt's working paper on affirmative action (E/CN.4/Sub.2/1998/5).

49. Mr. JOINET said that the words "protection" and "violation" were commonly used for civil and political rights but not for economic, social and cultural ones. The term used for the latter category of rights was "realization". The question thus arose as to who was responsible for ensuring their realization. The answer was primarily the State but also activists operating individually or through what had come to be known as organized civil society. In many countries persons who defended economic rights, through trade unions or agricultural reform bodies for example, were persecuted. The fact that the right of association was recognized in both the International Covenants on Human Rights was a clear indication of the interdependence of the two sets of rights. A genuine shift in the balance of the Sub-Commission's discussions in favour of economic, social and cultural rights would involve the consideration of situations, including geographical situations, under both agenda item 2 and agenda item 4.

50. Mr. NEGRIN (Observer for Mexico), speaking in exercise of the right of reply, said that an NGO, North-South XXI, had provided inaccurate information on the situation of persons who had been displaced after the Zapatista uprising in the State of Chiapas and on the clashes that had occurred in certain parts of that State. His Government was endeavouring to address the situation through dialogue and negotiations and he would report under agenda item 10 (b) on the measures taken on behalf of the displaced persons concerned.

The meeting rose at 5.55 p.m.